

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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REGINALD STEWART,

Petitioner,

Civil No. 08-5509 (DWF/JJG)

v.

**REPORT AND RECOMMENDATION**

DWIGHT FONDREN,

Respondent.

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Petitioner commenced this action by filing an application for habeas corpus relief under 28 U.S.C. § 2241. The matter has been referred to this Court for report and recommendation pursuant to 28 U.S.C. § 636 and Local Rule 72.1. For the reasons discussed below, it is recommended that this action be dismissed without prejudice.

On October 15, 2008, Petitioner filed a habeas corpus petition that presented claims pertaining to his incarceration by the federal Bureau of Prisons. It was readily apparent to the Court, however, that Petitioner was not actually challenging the fact or duration of his confinement, but rather, he was challenging the conditions of his confinement. Because habeas corpus is not an appropriate remedy for a prisoner's "conditions of confinement" claims, the original petition was summarily dismissed (without prejudice) pursuant to Rule 4 of the Rules Governing Section 2254 Cases In The United States District Courts. See Order dated November 21, 2008 [Docket No.

2].<sup>1</sup>

Petitioner was granted leave to file an amended pleading, to be prepared and submitted as a non-habeas civil rights complaint. He was also directed to pay the filing fee for a non-habeas civil action, or else apply for leave to proceed in forma pauperis, (“IFP”), and pay the initial partial filing fee required by 28 U.S.C. § 1915(b)(1). The Court’s order expressly advised Petitioner that if he did not file an amended pleading, and pay his filing fee, (or satisfy the requirements for proceeding IFP), by December 16, 2008, he would be deemed to have abandoned this action, and it would be recommended that the action be dismissed pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute.

The deadline for complying with the Court’s prior order in this matter has now expired, and Petitioner has not filed a civil complaint, nor has he taken any action to resolve the filing fee requirement. Petitioner has offered no excuse for his failure to comply with the prior order. Therefore, it is now recommended, in accordance with the Court’s prior order, that Petitioner be deemed to have abandoned this action, and that the action be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b). See Henderson v. Renaissance Grand Hotel, 267 Fed.Appx. 496, 497 (8<sup>th</sup> Cir. 2008) (unpublished opinion) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal

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<sup>1</sup> Petitioner challenged the Court’s prior order, by filing a self-styled “motion for reconsideration,” (Docket No. 4), which was construed to be an appeal to the District Court Judge. On February 9, 2009, the District Court Judge affirmed this Court’s prior order. (Docket No. 5.)

Rules of Civil Procedure or any court order.”); Link v. Wabash Railroad Co., 370 U.S. 626, 630-31 (1962) (recognizing federal court’s inherent authority to “manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases”).

### **RECOMMENDATION**

Based upon the above, and upon all the records and proceedings herein,

**IT IS HEREBY RECOMMENDED** that:

This action be **DISMISSED WITHOUT PREJUDICE**.

Dated: March 9, 2009

s/ Jeanne J. Graham

JEANNE J. GRAHAM

United States Magistrate Judge

### **NOTICE**

Pursuant to D. Minn. LR 72.2(b), any party may object to this Report and Recommendation by filing and serving specific, written objections by **March 23, 2009**. A party may respond to the objections within ten days after service thereof. Any objections or responses filed under this rule shall not exceed 3,500 words. A District Judge shall make a de novo determination of those portions to which objection is made. Failure to comply with this procedure shall operate as a forfeiture of the objecting party’s right to seek review in the United States Court of Appeals for the Eighth Circuit.